IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 4220 of 2007(B)

OS.140/1992 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

KURIAN, S/. CHERU,
CHITTILAPPILLY KUNNATH HOUSE,
PARAPPUR TALUK, THOLOOR,
THRISSUR.

BY ADV. SRI.K.A.SREEJITH

RESPONDENTS:

1. ANNAMMA,
W/O. CHITTILAPPILLY CHERAPPAN,
PARAPPUR, THOLOOR, THRISSUR.

2. BABY JOSE, S/O. CHERAPPAN -DO-.

3. JOSEPH BHUKANPUR,
VIA. MAROL NAGAR, GHASIABAD, U.P.-201206.

4. LILLY, W/O. CHAKKOCHAN,
OLLUKKARA HOUSE, PUDUKKAD, MUKUNDAPURAM.

5. AMMINI, D/O. CHERAPPAN,
CHITTILAPPILLY KUNNATH, PARAPPUR, THOLOOR,THRISSUR

6. ROSY, -DO- -DO-.

7. LEELAMA -DO- -DO-.

8. OMANA -DO- -DO-.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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W.P.(C)NO.4220 OF 2007

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Dated this the 9th day of February 2007

JUDGMENT

The grievance of the petitioner who is the second plaintiff in O.S.140/92 on the file of 2nd Additional Sub Court, Thrissur is that the Commissioner has measured the property and fixed the boundaries and shown the property of petitioner in yellow colour and property of the defendant in green colour fixing the boundaries thereof as well but that the ascertainment of boundary was in an unscientific manner as the Commissioner has not determined the northern boundary of the scheduled property in the sequence in which of the property was sold by Mariyakkutty, the predecessor in interest of the petitioner and the respondents. It is submitted that a measurement in the sequence in which the properties were sold by Mariyakkutty is absolutely necessary for settling the dispute between the plaintiff and the defendants and that Ext.P4 order disallowing such a request deserves to be quashed.

2. It is worthy to note that the case is one wherein as observed by the Trial Court the first Commissioner surrendered

the commission warrant for non co-operation of parties. Thereafter Adv.K.S.Praveen was appointed as Commissioner. He filed a commission report but the report was remitted for further ascertainment of certain matters. Thereafter Adv. Raphy Joseph was appointed as Commissioner and then Adv.Beena Menon was appointed and they all expressed their inability to execute the commission warrant as the parties are not co-operating for the execution of the warrant. It is finally that Adv.N.D.Joy was appointed as Commissioner who with the assistance of Taluk Surveyor of Thrissur Taluk executed the order and filed commission report demarcating the properties and fixing the boundaries. The Trial Court has observed that the said Commissioner is a Civil Engineer and he was executing the order with the assistance of the Taluk Surveyor measuring the property and that however Commissioner's report is only a piece of evidence and prima facie there is no procedural irregularity or inherent defect in the report warranting Commission report to be remitted to the Commissioner. The Trial Court further observed that the court will have to consider the report along

with the other evidence at the final disposal of the suit taking into account the entire evidence in the case.

3. Assailing the order of the Sub Judge what is urged by counsel for the petitioner is that the property originally belonged to Mariyakutty, the predecessor in interest of the plaintiff and defendants under Ext.A1 document of 1107 M.E. that she executed document no.14/1121 M.E. in favour of Kunjilakutty in the first instance; that thereafter she executed deed no.1606 of 1121 M.E. to Kochumariya and another document in favour of the defendant Annamma who are all daughters in law of Mariyakkutty; that what Kochumariya obtained under deed No.1606/1121 M.E. has been transferred to her son, the second plaintiff under deed no.103/1985 and that to ascertain the boundaries the properties transferred by Mariyakkutty in the chronological order has to be measured out and demarcated. The request cannot be entertained as Kunjilakkutty who is a transferee under deed no.14 of 1121 M.E. and Mariyakkutty's legal representatives are not parties to the suit. What the petitioner/second plaintiff can take under deed no.103 of 1985

executed by her mother Kochumariya is only that portion of the property which was in her possession pursuant to execution of document no.1606/1121 M.E. in her favour by Mariyakkutty. The petitioner cannot aspire to have recovery of possession of any portion of land in possession of strangers under cover of demarcating property and putting up of boundary. Hence, the request to have the properties measured in the order in which Mariyakkutty executed documents to Kunjilakkutty, Kochumariya and the first defendant Annamma is untenable. I also find that the request so advanced is ill conceived. The dismissal of I.A.7094/06 vide Ext.P4 order is hence upheld.

This writ petition in the circumstances is devoid of merit and is dismissed.

K.P.BALACHANDRAN, JUDGE

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